

Message Text

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CAPE TOWN FOR EMBASSY

E.O.11652: N/A
TAGS: PINS, SHUM, SF
SUBJECT: SASO/BPC TRIAL: JUDGE TO RULE ON DISCHARGE

REFERENCE: 75 PRETORIA A-153, AND PREVIOUS

1. (UNCLASSIFIED) THE TERRORISM TRIAL OF NINE SASO/BPC MEMBERS WAS ADJOURNED IN THE PRETORIA SUPREME COURT FEBRUARY 23 FOR ONE MONTH TO GIVE PRESIDING JUDGE JUSTICE BOSHOFF TIME TO CONSIDER A DEFENSE APPLICATION FOR DISCHARGE ON ALL COUNTS FOR FIVE DEFENDANTS AND MOST CHARGES AGAINST THE REMAINING FOUR. THE APPLICATION HOLDS THAT THE STATE FAILED TO PRODUCE A PRIMA-FACIA CASE OF "TERRORISM" AGAINST STRINI MOODLEY, N.V. NKOMO, P.J. NEFOLOVHODWE, G. SEDIBE AND A.Z. CINDI. THE JUDGE WILLDELIVER HIS DECISION MARCH 23.

2. IN REGARD TO THE CHARGES AGAINST SATHS COOPER, MUNTU MYEZA, DRAKE LEKOTA AND AUBREY MOKOAPE, THE DEFENSE HAS APPLIED FOR DISCHARGE

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ON MOST COUNTS, THE DEFENSE WILL ARGUE THAT THE FOUR, NEVERTHELESS, ARE NOT GUILTY OF THE CRIME OF TERRORISM BY HAVING ORGANIZED THE RALLY AND PROCEEDING WITH THEIR PLANS AFTER IT WAS BANNED.

3. ARGUEMENT ON THE APPLICATION BEGAN FEBRUARY 2 WHEN THE TRIAL RESUMED AFTER AN EXTENDED HOLIDAY RECESS WHICH BEGAN DECEMBER 12 UPON COMPLETION OF THE PROSECUTION'S CASE. THE CRUX OF THE DEFENSE APPLICATION IS THAT THE STATE SUBMITTED NO ACTUAL AND LITTLE INFERENTIAL EVIDENCE TO SHOW THAT THE DEFENDENTS WERE ENGAGED IN A CONSPIRACY OR SOUGHT TO OVERTHROW THE SYSTEM BY VIOLENT MEANS. DEFENSE AGREED THAT SASO/BPC AND THE ACCUSED DID INDEED WANT A COMPLETE CHANGE IN THE SYSTEM OF GOVERNMENT AND ENGAGED IN UNCONSTITUTIONAL MEANS TO BRING THIS ABOUT, BUT POINTED OUT THAT NO CONSTITUTIONAL MEANS EXIST FOR BLACKS TO ACHIEVE THE CHANGES THEY DESIRE BECAUSE THEY ARE CONSTITUTIONALLY EXCLUDED FROM THE POLITICAL SYSTEM. WORKING OUTSIDE THE ESTABLISHED SYSTEM FOR SOCIAL, ECONOMIC AND POLITICAL CHANGE WAS NOT TERRORISM, THE DEFENSE ARGUED, UNLESS VIOLENT MEANS WERE USED OR ATTEMPTED, AND THIS THE STATE HAD NOT PROVEN. (END UNCLASSIFIED).

4. (BEGIN LIMITED OFFICIAL USE) COMMENT: DURING THE STATE'S REPLY TO THE DEFENSE APPLICATION, SUPREME COURT JUSTICE BOSHOFF APPEARED TO BE SYMPATHETIC, IN GENERAL, TO THE ARGUMENTS OF THE DEFENSE LAWYERS, AND CLOSELY GRILLED PROSECUTOR CECIL REES ON THE STATE'S INTERPRETATION OF THE TERRORISM ACT. THE DEFENSE TEAM IS CAUTIOUSLY OPTIMISTIC THAT THEIR APPLICATION WILL BE AT LEAST PARTIALLY SUCCESSFUL.

SHOULD THE JUDGE DISMISS THE APPLICATION, HOWEVER, HIS DECISION WOULD ESTABLISH A PRECEDENT WHICH COULD HAVE A SERIOUS IMPACT ON THE ENTIRE QUESTION OF LEGITIMATE DISSENT IN SOUTH AFRICA. A NEGATIVE RULING WOULD IN EFFECT MEAN A FURTHER NARROWING OF THE PARAMETERS OF ALLOWABLE CRITICISM OF THE SOUTH AFRICAN SYSTEM.

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